

1
2
3
4
5
UNITED STATES DISTRICT COURT
6

7 EASTERN DISTRICT OF CALIFORNIA
8

9 JAN ALEC WEITH,

10 Plaintiff,

11 v.

12 GOVERNOR GAVIN NEWSOM, et
13 al.

14 Defendants.

15 **Case No. 1:22-cv-01256-JLT-SKO**

16 **ORDER TO SHOW CAUSE WHY THE ACTION
SHOULD NOT BE DISMISSED FOR
PLAINTIFF'S FAILURE TO OBEY COURT
ORDER AND LOCAL RULES AND FAILURE TO
PROSECUTE**

17 **(Doc. 3)**

18 **TWENTY-ONE (21) DAY DEADLINE**

19 Plaintiff Jan Alec Weith, proceeding *pro se*, filed this civil action on September 30, 2022.
20 (Doc. 1.) Plaintiff also filed an application to proceed without the prepayment of fees, but the form
21 application was not complete. (See Doc. 2.) The application contained several deficiencies and
22 contained unintelligible handwriting. (See *id.*)

23 On October 6, 2022, the Court issued an order denying without prejudice Plaintiff's
24 application to proceed without the prepayment of fees and directing Plaintiff to either file an
25 amended application, completed and signed, or pay the \$402.00 filing fee for this action, within
26 twenty-one days. (Doc. 3.) Plaintiff was cautioned that the failure to comply with the Court's order
27 would result in a recommendation that this action be dismissed. (See *id.*) More than twenty-one
28 days have passed, and Plaintiff has failed to file an amended application or to pay the filing fee.

Further, when served at Plaintiff's address of record, the October 6, 2022, order was
returned as undeliverable on October 17, 2022. Local Rule 183(b) provides that:

1 A party appearing in propria persona shall keep the Court and opposing parties
2 advised as to his or her current address. If mail directed to a plaintiff in propria
3 persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff
4 fails to notify the Court and opposing parties within sixty-three (63) days thereafter
of a current address, the Court may dismiss the action without prejudice for failure
to prosecute.

5 L.R. 183(b). Although more than sixty-three days have passed since the order was returned as
6 undeliverable, Plaintiff has not contacted the Court to provide his current address, request an
7 extension, or to otherwise explain his lack of compliance with the order.

8 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide, “[f]ailure of counsel or of
9 a party to comply with . . . any order of the Court may be grounds for the imposition by the Court
10 of any and all sanctions . . . within the inherent power of the Court.” Local Rule 110. “District
11 courts have inherent power to control their dockets,” and in exercising that power, a court may
12 impose sanctions, including dismissal of an action. *Thompson v. Housing Authority of Los Angeles*,
13 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to
14 prosecute an action or failure to obey a court order, or failure to comply with local rules. *See, e.g.*
15 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with
16 an order requiring amendment of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130
17 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d
18 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

19 Accordingly, Plaintiff is **ORDERED** to show cause within twenty-one (21) days of the
20 date of service of this order why the action should not be dismissed for Plaintiff’s failure to comply
21 with the Court’s order and Local Rules and failure to prosecute. Alternatively, within this same
22 time period, Plaintiff may pay the \$402.00 filing fee for this action, file an amended application to
23 proceed without the prepayment of fees, or file a notice of voluntary dismissal. The Court further
24 CAUTIONS Plaintiff that, if he fails to take action within twenty-one (21) days of the date of
25 service of this order, the Court will recommend to a presiding district court judge that this action
26 be dismissed in its entirety.
27
28

The Court DIRECTS the Clerk to send a copy of this Order to Plaintiff at his address listed on the docket for this matter.

IT IS SO ORDERED.

Dated: December 29, 2022

/s/ Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE